IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 462

RICHARD A. KNIGHT,

Petitioner,

AGAINST

THE BAR ASSOCIATION OF THE CITY OF NEW YORK.

Petition and Brief in Support of Writ of Certiorari to the Court of Appeals of the State of New York.

RICHARD A. KNIGHT,
Petitioner in Person,
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New York.

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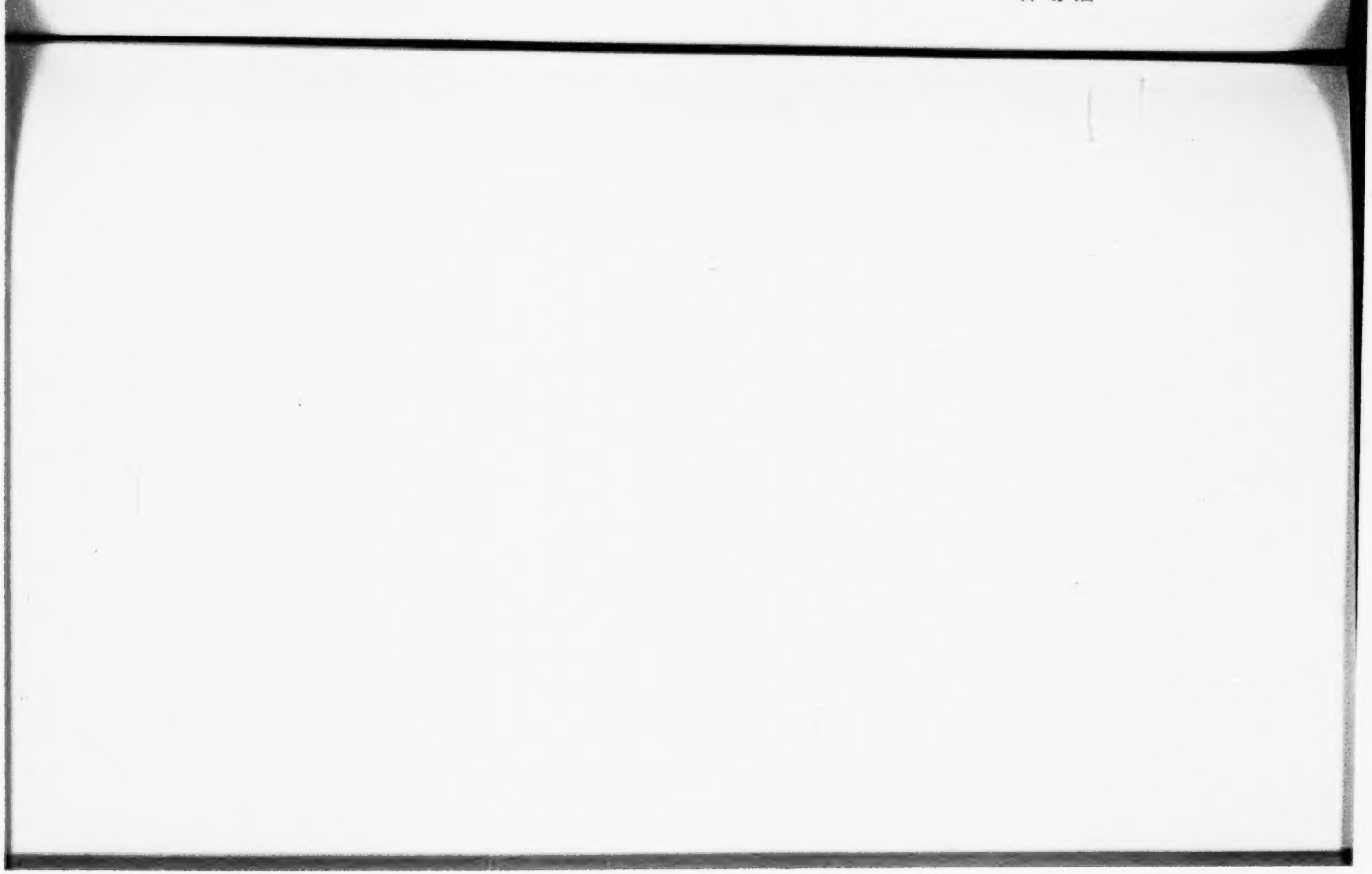

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

RICHARD A. KNIGHT, *Petitioner,* AGAINST THE BAR ASSOCIATION OF THE CITY OF NEW YORK.	No. .....

Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Richard Knight, petitioner, prays that a Writ of Certiorari issue to the Court of Appeals of the State of New York in the above entitled action and respectfully shows:

Jurisdiction.

The Writ is sought because a State Court has decided federal questions of substance in a way not in accord with applicable decisions of this Court and because of the importance of those questions.

Summary Statement of the Matter Involved.

By an order dated May 8th, 1942 (Rec. p. 2) of the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department, petitioner was disbarred from practicing law in the State of New York.

The authority, if any, for this order and for the proceeding in which it was entered is Section 88 (2) of the Judiciary Law of the State of New York, the pertinent part of which reads:

> "The Supreme Court shall have power and control over attorneys and counsellors-at-law and the Appellate Division of the Supreme Court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice as such who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor or any *conduct prejudicial to the administration of justice.*" (Italics ours.)

The proceeding was instituted by the Association of the Bar of the City of New York (hereinafter called the Association) with the service on petitioner of a Notice of Motion and a Petition (Rec. pp. 13-113) by John T. Cahill, an attorney acting for the Association.

There is no provision contained in the Charter of this Association nor in any law of the State of New York authorizing it to institute such a proceeding in such a manner.

On the other hand, Section 476 of the Judiciary Law of the State specifically provides that a disciplinary proceeding against an attorney may be instituted only at the

direction of an Appellate Division and may be prosecuted only by an attorney nominated by it.[1]

The charges, six in number, contained in the Petition were that, on successive dates, this petitioner had caused to be printed and disseminated a series of six public letters, each of which, insofar as it referred to judges of the State of New York, constituted (and the Petition here employs the exact words of Section 88 (2) of the Judiciary Law quoted *supra*) "conduct prejudicial to the administration of justice".

It was not charged in the Petition that any statement referring to any judge contained in any of the letters was untrue or unjustified.

It was not charged that any statement in any letter referred to any judge before whom there was pending at the time of its publication, a judicial proceeding, the determination of which it was the purpose of such letter to affect and, in fact, no such judicial proceeding was pending.

On March 23rd, 1942 Charles B. Sears, as official Referee, filed with the Appellate Division, his Referee's

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1. The pertinent parts of this section read as follows:

"Section 476: Suspension or Removal of Attorneys Must Be on Notice: Before an attorney or counsellor at law is suspended or removed as prescribed in Section 88 of this chapter, a copy of the charge must be delivered to him personally within or without the State or, in case it is established to the satisfaction of the presiding justice of the Appellate Division, Supreme Court to which the charges have been presented, that he cannot with due diligence be served personally, the same may be served upon him by mail, publication or otherwise as the presiding justice may direct and he must be allowed an opportunity of being heard in his defense. It shall be the duty of any District Attorney within a department, when so designated by the presiding justice of the Appellate Division of the Supreme Court to prosecute all proceedings for the removal or suspension of attorneys and counsellors at law or the presiding justice may, in a county wholly included within a City or in a county having a population of over 300,000 inhabitants, appoint an attorney and counsellor at law designated by a duly incorporated Bar Association approved by him, to prosecute any such proceedings and upon the termination of the proceedings may fix the compensation to be paid to such attorney and counsellor at law for the services rendered under such designation which compensation shall be a charge against the county specified in his certificate and shall be paid thereon."

Report (Rec. p. 117) in which he found that the printing and publication of each of the letters by petitioner, insofar as it referred to judges of the State of New York, constituted "conduct prejudicial to the administration of justice".

The Referee did not find, however, that any statement contained in any of the letters referring to such judges was untrue or unjustified and no charge was ever made before him and no evidence presented to him which established or even purported to establish that any such statement was untrue or unjustified (Rec. pp. 122-219).

On April 24th, 1942, in opposition to the Association's motion to confirm the Referee's Report, petitioner filed an affidavit (Rec. p. 222) in which he not only called these circumstances to the attention of the Appellate Division but in which he unqualifiedly swore (Rec. p. 235) that every statement he had made in reference to any judge in any of the letters was true and justified and challenged the Association to call the attention of the Court and requested the Court to require the Association to call its attention to any such statement which was not true and not justified.

The Association made no Answer of any kind to this affidavit although it obtained two adjournments of the return day of the motion, professedly for the purpose of making such Answer. And the Appellate Division finally, without requiring it to make any such Answer, confirmed the Report of the Referee.

Two weeks later, the Appellate Division filed its Opinion and entered its Decree disbarring petitioner.

Although the only charges made against petitioner were that, in writing and publishing statements concerning the conduct of Judges of the State of New York in proceedings which were no longer pending before them, he had been guilty of "conduct prejudicial to the administration of justice" and although this was the sole finding

of the Referee, the Appellate Division's Opinion (Rec. p. 239) is notable for its findings, in the absence of any evidence whatever and in the absence of any corresponding findings of the Referee, that the Judges who were attacked in the letters had "fearlessly performed their judicial duties and refused to be intimated or coerced by" the petitioner (Rec. p. 246, fol. 737) and that "the theme of all his publications is a scandalizing of the Courts" (Rec. p. 246, fol. 738) because "in the performance of their duties they had refused to acquiesce in his conclusions" (Rec. p. 243, fol. 728) and finally that petitioner had been "guilty" of "gross, moral turpitude" (Rec. p. 250, fol. 750).

From the order of disbarment (Rec. p. 2) petitioner appealed to the Court of Appeals by Notice dated June 23rd, 1942 (Rec. p. 1).

Thereafter, the Association moved the Court of Appeals for an order dismissing the Appeal (Rec. p. 266) and on June 10th, 1943 after argument and submission of briefs in which were raised all the federal questions here raised, an order was made granting the motion.

By reason of that order, the jurisdiction of this Court has been invoked.

Statement Particularly Disclosing the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review the Order in Question and the Questions Presented and the Reasons Relied on for the Allowance of the Writ.

Petitioner urges that the Court of Appeals erred:

1. Because Section 88 (2) of the Judiciary Law of the State of New York, as interpreted by the Court below, constitutes a violation of petitioner's right of free speech and free press and is, therefore, unconstitutional, as is likewise the order of disbarment and for the same reasons.

2. The proceeding instituted against petitioner was unauthorized by the law of the State of New York and was in contrariety to that law and was a violation of petitioner's right to due process and so far departed from the accepted course of judicial proceedings as to call for an exercise of this Court's power of supervision.

3. The honesty of the Appellate Division, First Department, prior to its taking jurisdiction of the proceeding against petitioner, had been repeatedly and publicly challenged by petitioner. So that even if the jurisdiction which it took had not been a violation of due process of law, *per se*, its taking it under such circumstances would have been and would have constituted a departure from the accepted and usual course of judicial proceedings so drastic as to call for an exercise of this Court's power of supervision.

4. The Association was wholly without authority even under the terms of its own By-laws to have instituted the proceeding in the circumstances in which it did institute it and its being permitted by the Court below to do so was, therefore a violation of due process and constituted so drastic a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals of the State of New York in case No. 86 (290 N. Y. 871) commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the Record and all proceedings in the case of the Bar Association of the City of New York against Richard A.

Knight and that the order of the Court of Appeals of the State of New York may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

Dated, New York, New York, October 27th, 1943.

RICHARD A. KNIGHT,
Petitioner in Person.

Certificate.

I hereby certify that I have prepared the foregoing Petition and that in my opinion it is well founded and entitled to the favorable consideration of this Court and it is not filed for the purposes of delay.

RICHARD A. KNIGHT,
Petitioner in Person,
32 Broadway,
New York, New York.